REMARKS

The specification has been objected to due to informalities. The specification has been amended to correct the noted informalities.

Claims 10-18 have been rejected under 35 USC 103(a) as unpatentable over Soumiya (U.S. Patent No. 5,583,857). The rejection is respectfully traversed.

The present invention is to calculate and/or estimate a bandwidth. This is indicated, for example, on page 5, line 12- page 6, line 20 of the original English specification. In the invention, an acceptance algorithm (sigma rule) is started (see, for example, claim 1 requiring an identification which starts from an initial value and the acceptance algorithm is performed at every step), which is then used to calculate the bandwidth. In this case, therefore, the acceptance algorithm simply represents a criterion for calculation of bandwidths for a group of compounds (see, for example, claim 1 requiring the defining of first and second bandwidths representative of a first and second class, respectively).

In Soumiya, on the other hand, there is a different target direction, under which a new compound is to be accepted or not accepted (see, for example, column 7, lines 35-39). Accordingly, a fourth (final) process step is described as the outcome of three process steps, with the result of this fourth process step being a yes/no statement (namely, whether the incoming call is accepted or rejected). In this regard, two different sets of problems are at issue.

Another difference is the development of the acceptance algorithm itself. In column 7, lines 21-25, it can be deduced that the estimation of the call is calculated on the basis of an average cell rate and a peak cell rate (PCR). In the present invention, an estimation is performed on the basis of a sustainable cell rate (SCR) and the peak cell rate (PCR) (see, for example, claim 11).

Finally, in the present invention, a material constant C and the maximum possible load on the line $p_0$ are also incorporated into the calculation of the effective bandwidth. This feature is not disclosed in Soumiya.

va-36891

Additionally, the Examiner states "although not expressly stated, it [is] obvious that there is an initial value such that the process either begins with a zero effective bandwidth upon initialization if no calls are yet allocated bandwidth or it is initialized with the bandwidth of an connections the line will carry at initialization." The Examiner may not make conclusory statements of obviousness with evidentiary support on the record. See *In re Sang Su Lee*, 277 F.3d 1338 (Fed. Cir. 2002), stating motivation to combine or modify references "must be based on objective evidence of record." *Lee* at 1340. "This factual question of motivation is material to patentability, and could not be resolved on subjective belief and unknown authority." *Lee* at 1344. Nor can the Examiner use an inherency argument in an obviousness rejection. That is, the Examiner appears to be arguing that although not expressly stated, Souyima inherently discloses the initialization. However, it is fundamental patent law that that which is inherent is not necessarily obvious. Hence, the Examiner is respectfully requested to cite a reference in support of his/her reasons for obviousness, or withdraw the rejection of record.
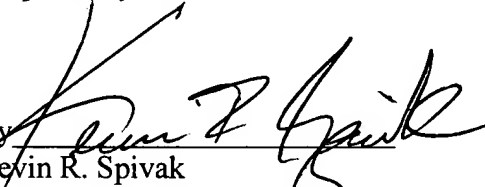
Since the recited method is not disclosed by the applied prior art, claims 10-18 are believed to be patentable. Hence, claims 10-18 are in condition for allowance. An indication of the same is solicited. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "**Version with markings to show changes made.**"

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicant(s) petition(s) for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 449122037100.

Dated:  June 24, 2003                    Respectfully submitted,

By

Kevin R. Spivak
   Registration No.: 43,148
MORRISON & FOERSTER LLP
1650 Tysons Blvd, Suite 300
McLean, Virginia  22102
Phone (703) 760-7762
Facsimile (703) 760-7777
Attorneys for Applicant

**Version With Markings to Show Changes Made**

## In the Specification

Please replace the paragraph beginning on page 2, line 27, with the following replacement paragraph.

To this end, ~~an~~ algorithm sequences in the higher-ranking control means, having ~~with which the~~ parameters received from the transmitting equipment, are checked. Further, these are compared to parameters that have already been calculated and relate to the momentary load on the connecting line. A decision is then made on the basis of these comparisons as to whether the new connection request is accepted and this connection can still be permitted. Among other things, the peak cell rate that has already been addressed or the sustainable cell rate are employed as critical parameters.

Please replace the paragraph beginning on page 4, line 1, with the following replacement paragraph.

All other virtual connections are assigned to the class P. These particularly include the connections with constant bit rate. Further, all connections are assigned here for which the parameters SCR as well as PCR lie very close to one another- or very far from one another or that already exhibit a high peak cell rate PCR compared to the overall capacity of the connecting line. A peak cell rate that is greater ~~then~~ than 3% of the maximally possible transmission capacity of the connecting line is valid as criterion for this.